



Federal Communications Commission  
Washington, D.C. 20554

August 28, 2009

DA 09-1964

Mr. Ronald J. Tornquist  
Puget Sound Energy  
9515 Willows Rd NE  
Redmond, WA 98052

Dear Mr. Tornquist:

On July 22, 2008, Puget Sound Energy (PSE) filed the above-captioned renewal application for Microwave Industrial/Business Pool Station WNEV369, Renton, Washington.<sup>1</sup> PSE requests that we waive Section 1.949 of the Commission's Rules to allow its application to be accepted even though it was filed late.<sup>2</sup> For the reasons stated below, we deny PSE's Waiver Request and dismiss its Renewal Application.

On February 24, 1998, the Commission granted PSE's application for renewal of Station WNEV369.<sup>3</sup> On March 3, 2008, the Wireless Telecommunications Bureau sent a renewal reminder to PSE.<sup>4</sup> On May 27, 2008, PSE's authorization for Station WNEV369 expired. On July 22, 2008, PSE filed the Renewal Application, together with a request for waiver of Section 1.949(a) of the Commission's Rules, which requires licensees to file renewal applications no later than the expiration date of the license.<sup>5</sup>

In its Waiver Request, PSE states that, in March 2008, the offices of PSE's telecommunications department were moved to a new physical address and that, shortly after the move was completed, the individual in charge of PSE's MAS licenses left his position.<sup>6</sup> PSE says that it missed the May 27, 2008, renewal deadline for Station WNEV369 because of the concurrent office move and personnel change.<sup>7</sup> PSE states that the subject MAS facility is an important component of its Supervisory Control and Data Acquisition (SCADA) services, which it says are essential for safe and efficient operation of PSE's electric utility system.<sup>8</sup>

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the

<sup>1</sup> File No. 0003513606 (filed Jul. 22, 2008) (Renewal Application).

<sup>2</sup> Renewal Application, Request for Waiver of Section 1.949 (Waiver Request).

<sup>3</sup> File No. R980224019 (granted Feb. 24, 1998).

<sup>4</sup> See Ref. No. 4716054 (Mar. 3, 2008). The letter was addressed to Puget Sound Energy, 9515 Willows Rd NE, Redmond, WA 98052.

<sup>5</sup> See 47 C.F.R. § 1.949.

<sup>6</sup> Waiver Request at 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.<sup>9</sup> Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.<sup>10</sup> In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.<sup>11</sup> Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that PSE's late-filed renewal application should be dismissed.<sup>12</sup>

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.<sup>13</sup> In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.<sup>14</sup> Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>15</sup>

Significantly, PSE does not address the Commission's policy regarding late-filed renewal applications. PSE also fails to provide any reason concerning why a waiver grant is warranted under the circumstances presented. Rather, PSE merely states that it failed to file its renewal application on time because one of its employees left the company shortly after the offices of PSE's telecommunications department were moved.<sup>16</sup> Thus, PSE concedes that its failure to file its license renewal application in a timely manner was due to its own administrative oversight. As has been previously held, an inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.<sup>17</sup> Further, each licensee is solely responsible for knowing terms of its license

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<sup>9</sup> Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

<sup>10</sup> *Id.* at 11486 ¶ 22.

<sup>11</sup> *Id.* at 11485 ¶ 22.

<sup>12</sup> *See, e.g.*, WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

<sup>13</sup> 47 C.F.R. § 1.949(a).

<sup>14</sup> 47 C.F.R. § 1.955(a)(1).

<sup>15</sup> 47 C.F.R. § 1.925(b)(3).

<sup>16</sup> Waiver Request at 1.

<sup>17</sup> *See* Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

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and submitting a renewal application to the Commission in a timely manner.<sup>18</sup> Thus, we deny PSE's request for a waiver to permit the late renewal of its license and dismiss the application as untimely filed.

We conclude that the role of the facilities in maintaining a safe and efficient operation of PSE's electric utility system, by itself, is insufficient to justify a waiver. PSE has received special temporary authority to operate the facilities formerly licensed under Station WNEV369.<sup>19</sup> If PSE wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.<sup>20</sup>

Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver of Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, filed by Puget Sound Energy on July 22, 2008 IS DENIED, and application File No. 0003513606 SHALL BE DISMISSED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble  
Deputy Chief, Broadband Division  
Wireless Telecommunications Bureau

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<sup>18</sup> *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

<sup>19</sup> See File No. 0003513618, Call Sign WQCJ784 (granted Jul. 28, 2008).

<sup>20</sup> See 47 C.F.R. § 101.103.